

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In Re:

REINA MERCADO,

Case No. 1-13-40725-cec  
Chapter 7

**A L L E G E D D E B T O R ' S  
REBUTTAL TO PETITIONER'S  
REPLY TO ALLEGED DEBTOR'S  
MOTION TO DISMISS**

Return Date: July 16, 2013  
2:00 PM

Debtor.  
-----X

WILLIAM H. SALGADO, an attorney at law duly admitted to practice in the Eastern District, affirms the following:

1. Affirmant is the attorney for the alleged debtor.
2. This affirmation submitted in rebuttal to the Reply to Motion to Vacate Order of Relief and Reply to Motion to Dismiss Involuntary Petition dated July 9, 2013.
3. Contrary to petitioner's counsel's assertion at paragraph that commences at the bottom of the second page of the reply, the Supreme Court action designated with Index No. 12726/2011 *was dismissed* on December 3, 2012. Exhibit B to the Alleged Debtor's Motion to Dismiss, a printout from the Supreme Court Clerk's minutes, shows an entry dated December 3, 2012 with a marking "DNAES," which means "dismissed non appearance either side."
4. The order dated December 21, 2012, attached as Exhibit 2 to the petitioner's reply was entered *after* the case was dismissed. As such, it is a nullity. Affirmant's letter to petitioner's then attorney, to that effect, is attached hereto as Exhibit A.
5. The said action remains dismissed, a motion to restore was never made, and no judgment was ever entered in that action. It is dismissed.
6. The said order does not in any manner reflect the Alleged Debtor's willingness to

comply with her obligations as a litigant. In fact the alleged Debtor had produced all the documents requested, however, there was an argument amongst counsel as to the propriety of arguing discovery issues in the same motion where the court was being asked to recuse itself from the case.

7. As noted, that issue is now moot as the matter has been dismissed and no judgment has ever been entered in that action.

8. That action was an action where the petitioner sought to litigate the alleged “claim” raised in the petition in this proceeding. The complaint in that case is attached as Exhibit I to the Alleged Debtor’s motion to dismiss. The Alleged Debtor presented an answer with counter claims, Exhibit J to the Alleged Debtor’s motion to dismiss. Alleged Debtor’s counterclaims as set forth in the referenced answer outweigh the alleged “claim” set forth in the petition, the counterclaims totaling \$201,333.00.

9. Rather than seeking to refile in state court, or to try to restore the dismissed action in Supreme Court, the petitioner has improperly elected to bring a state court issue into Federal Court through this involuntary Chapter 7 petition.

10. From another perspective, it is submitted that the petition in this case is insufficient for this court to grant the relief sought therein. A petition by fewer than three creditors must be supplemented by an additional allegation. This allegation is made on a separate page inserted following page 1 of the printed form. *Collier on Bankruptcy*, 15.01[6]. The petitioner has failed to provide that additional allegation.

11. Contrary to petitioner’s counsel’s assertion at the bottom of the third page of petitioner’s reply under the heading of “Meritorious Defense,” the issue of whether liability is “contingent” or subject to a “bona fide” dispute is not clear cut.

12. Because of the petitioner’s failure to pay the first mortgage, as had been the

practice for three and a half years, but rather having appropriated the received rental payments for her personal use, and thereby placing the property at risk of foreclosure, it is most certainly not clear that the issue of liability is not contingent on petitioner's proof of compliance the practice that had become established between the parties. Moreover, the alleged "claim" is most certainly the subject of a bona fide dispute between the parties, precisely because the petitioner had failed to pay the first mortgage, was appropriating rental payments for her personal use, and apparently had no intention of making any mortgage payments whatsoever. Consequently, under either the "contingency" or "bona fide dispute" analysis, the petitioner does not qualify for filing an involuntary Chapter 7 petition, and the petitioner should be dismissed for lacking any merit.

13. Affirmant has searched affirmant's files and has determined that the initial fax to affirmant's office was on February 13, 2013. However, because this office was not representing the Alleged Debtor in any bankruptcy proceeding, it was inadvertently set aside and not acted upon. A copy of the fax sent to affirmant's office is attached as Exhibit B.

14. Thus affirmant can corroborate that the Alleged Debtor did attempt to secure counsel at an early date, but affirmant's office did not provide the Alleged Debtor with an appointment until *after* the answer period had expired.

15. Thus, it is respectfully submitted that the Alleged Debtor did not deliberately ignore her obligations as a litigant.

16. The petitioner cites *Am Alliance Inc. Co. V. Eagle Ins. Co.*, 92 F3d 57 (2d Cir. (1996) ) setting forth the requirements to vacate a default under FRCP 60(b). As has been set forth , the default was not wilful, and the Alleged Debtor has a meritorious defense. The petitioner's counsel essentially admits that there is no prejudice to the petitioner. The only "prejudice," if any, is that the petitioner is no longer able to simply pocket the funds from the property rentals, and

unjustly enrich herself by failing to pay the first mortgage, to the detriment of the Alleged Debtor. As noted, this is a dispute between property owners that should be in state court and that the petitioner has improperly brought before this court.

17. Considering the fact that there are issues as to whether the Alleged Debtor is liable to the petitioner for alleged "claim" raised in the petition, that the Alleged Debtor is solvent, and that the failure to timely answer the petition did not stem from any deliberate disregard by the Alleged Debtor of her obligations as a litigant, it is respectfully submitted that the Alleged debtor is entitled to the relief requested.

**WHEREFORE**, it is respectfully requested that this court grant an order:

a) vacating the order of relief dated March 11, 2013, pursuant to Fed. R. Bankr. P. 9024 and Rule 60 F.R.Civ.P.; and


b) dismissing the involuntary Chapter 7 petition filed against the alleged debtor pursuant to 11 U.S.C. 303(b)(1) on the ground that the alleged "claim" upon which the petitioner premises its filing is contingent as to liability and that the alleged "claim" is the subject of a bonafide dispute between the parties;

c) dismissing this petition on the ground that it was filed in bad faith and that such filing is the petitioner's improper effort to transfer to the bankruptcy court a controversy between the parties that was in litigation in state court, and should continue to be litigated in state court;

d) granting any such other and further relief as to this court may seem just and proper.

Dated: July 15, 2013

Respectfully submitted,

  
**WILLIAM H. SALGADO**  
Attorney for Alleged Debtor (WS8153)  
37-06 82<sup>nd</sup> Street Suite 310  
Jackson Heights, NY 11372  
(718) 458 0047

**A**

# **WILLIAM H. SALGADO**

**ATTORNEY AT LAW**

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**37-06 82<sup>ND</sup> STREET, SUITE 310, JACKSON HEIGHTS, NY 11372 (718) 458 0047**

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January 24, 2013

Jon A. Lefkowitz, Esq.  
1222 Avenue M Suite 204  
Brooklyn, NY 11230

Re: Tanya Khursanova v. Reina M. Mercado

Dear Mr. Lefkowitz:

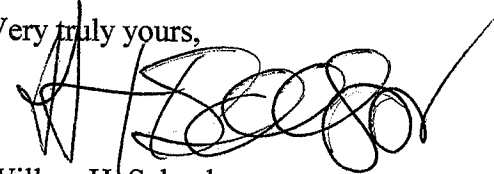
This will serve to confirm our recent telephone conversation.

The clerk dismissed this action on December 3, 2012, due to a non appearance by either side at a compliance conference. A copy of a print out from the court clerk's minutes is attached.

On December 21, 2012, no action was pending. The order rendered on that date, therefore, is a nullity.

I have conveyed to Mr. Araujo and Ms. Mercado your suggestion that this matter be settled. We are scheduled to meet Saturday, December 26, 2013, to discuss settlement. I will communicate to your office their position as soon as possible.

Very truly yours,



William H. Salgado

**B**

02/13/2013

de Reina Mercado  
Para William. SALGADO

Tel 718 288 9432

Case 1-13-40725-jf Doc 1 Filed 02/08/13 Entered 02/08/13 13:19:41

B5 (Official Form 5) (12/07)

## FORM 5. INVOLUNTARY PETITION

<b>United States Bankruptcy Court</b> <b>Eastern District of New York</b>		<b>INVOLUNTARY PETITION</b>
IN RE (Name of Debtor - If Individual: Last, First, Middle) <b>Marcado, Reina M</b>		ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
Last four digits of Social Security or other individual's Tax-ID No. (Complete EIN if more than one, state all.)		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) <b>1750 East 51st Street Basement Brooklyn, NY 11234</b>		MAILING ADDRESS OF DEBTOR (if different from street address)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS <b>Kings</b>		
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (if different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
<b>INFORMATION REGARDING DEBTOR (Check applicable boxes)</b>		
Nature of Debts (Check one box) Petitioner believes: <input type="checkbox"/> Debts are primarily consumer debts. <input checked="" type="checkbox"/> Debts are primarily business debts.	Type of Debtor (Form of Organization) <input checked="" type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other
<b>VENUE</b> <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> A bankruptcy case concerning debtor's estate, general partner or partnership is pending in this District.		<b>FILING FEE (Check one box)</b> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached. <i>(If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.)</i>
<b>PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)</b>		
Name of Debtor	Case Number	Date
Relationship	District	Judge
<b>ALLEGATIONS</b> (Check applicable boxes) 1. <input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b). 2. <input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. <input checked="" type="checkbox"/> The debtor is generally not paying such of its debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount. or 3.b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		<b>COURT USE ONLY</b>

B5 (Official Form 5) (12/07) - Page 2

Name of Debtor: Mercado, Raina M

Case No. \_\_\_\_\_

**TRANSFER OF CLAIM**

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1009(a).

**REQUEST FOR RELIEF**

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare, under penalty of perjury that the foregoing is true and correct, according to the best of their knowledge, information, and belief.

X/s/ Tanya Khursanova

Signature of Petitioner or Representative (State title)

Tanya Khursanova

Name of Petitioner

February 8, 2013

Date Signed

Name & Mailing  
Address of Individual  
Signing in Representative  
Capacity

Tanya Khursanova  
2063 Bragg Street  
Brooklyn, NY 11229

X/s/ Stuart I. Davis

Signature of Attorney

February 8, 2013

Date

Stuart I. Davis

Name of Attorney Firm (If any)

1960 Williamsbridge Road  
Bronx, NY 10461

Address

Telephone No. 718-319-1388X

Signature of Petitioner or Representative (State title)

Name of Petitioner

Date Signed

Name & Mailing  
Address of Individual  
Signing in Representative  
Capacity

X

Signature of Attorney

Date

Name of Attorney Firm (If any)

Address

Telephone No.

X

Signature of Petitioner or Representative (State title)

Name of Petitioner

Date Signed

Name & Mailing  
Address of Individual  
Signing in Representative  
Capacity

X

Signature of Attorney

Date

Name of Attorney Firm (If any)

Address

Telephone No.

**PETITIONING CREDITORS**

Name and Address of Petitioner  
Tanya Khursanova  
2063 Bragg Street  
Brooklyn, NY 11229

Nature of Claim

Debtor failed to turnover rents as collected.

Amount of Claim

90,000.00

Name and Address of Petitioner

Nature of Claim

Amount of Claim

Name and Address of Petitioner

Nature of Claim

Amount of Claim

Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.

Total Amount of  
Petitioners' Claims

90,000.00

0 continuation sheets attached

**United States Bankruptcy Court**

Eastern District Of New York  
271-C Cadman Plaza East, Suite 1595  
Brooklyn, NY 11201-1800

IN RE:

CASE NO: 1-13-40725-jf

Reina M Mercado

Social Security/Individual Taxpayer ID/Taxpayer ID/Employer ID No.:

CHAPTER: 7

DEBTOR(s)

**SUMMONS TO DEBTOR IN INVOLUNTARY CASE**

To the above named debtor:

A petition under title 11, United States Code was filed against you on February 8, 2013 in this bankruptcy court, requesting an order for relief under Chapter 7 of the Bankruptcy Code (title 11 of the United States Code).

YOU ARE SUMMONED and required to file with the clerk of the bankruptcy court a motion or answer to the petition within 21 days after the service of this summons. A copy of the petition can be viewed at the Court or on PACER (Public Access to Court Electronic Records).

Address of Clerk:

United States Bankruptcy Court  
271-C Cadman Plaza East, Suite 1595  
Brooklyn, NY 11201-1800

At the same time, you must also serve a copy of your motion or answer on petitioner's attorney.

Name and Address of Petitioner's Attorney:

Stuart I Davis  
1960 Williamsbridge Road  
Bronx, NY 10461

If you make a motion, your time to serve an answer is governed by Federal Rule of Bankruptcy Procedure 1011(c).

If you fail to respond to this summons, the order for relief will be entered.

Dated: February 11, 2013

For the Court, Robert A. Gavin, Jr., Clerk of Court

BLInvol [Involuntary summons 12/1/09]